

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: April 30, 2007

TO : Victoria E. Aguayo, Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Werner Co.; Royal Cabinets; and 530-4080-5006-7500
Seven-Up/RC Bottling Co.
Cases 21-CA-37574; 21-CA-37606; 37611; 37612

These cases were submitted for advice as to whether the Employers unlawfully refused to bargain with and/or remit Union dues to either or both of two competing factions of the American Industrial Workers Union (Union). After this matter was submitted to Advice, the Union's Executive Board faction requested to withdraw its charge in Case 21-CA-37574 after Werner negotiated and executed a successor collective-bargaining agreement with, and began granting exclusive access to and processing grievances raised by, the Executive Board.

We agree with the Region that it should accept the withdrawal of the Executive Board's charge against Werner. We further conclude that absent withdrawal, the Region should dismiss the charges filed against Werner, Royal, and Seven-Up by the opposing faction, led by John Romero.

We agree with the Region that the Executive Board, not Romero, is the Union group entitled to speak on behalf of the exclusive Section 9(a) representative. The members of the Executive Board (including Romero as Vice President) were certified in a DOL-supervised election. After the elected Union President resigned, Romero claimed to have automatically succeeded to that office, under an invalid version of the Union Constitution, when in fact the valid Constitution provided that only a majority of the Executive Board could appoint a successor. Romero then purported to remove the other Executive Board members, after the Teamsters won an election at the Seven-Up facility where the other Board members worked, under a Constitutional provision that required Board members to be employed in shops represented by the Union. However, Romero removed these Board members six months before the Teamsters were actually certified and recognized by the employer as the representative at Seven-Up. By the time of the Teamsters' certification, the Executive Board had removed from the Constitution that limitation on holding office. Finally, we note that after the DOL-supervised election in June 2006, Romero purported to place the Union in trusteeship on

behalf of the "National" Union, an entity which the DOL had previously concluded did not exist. In all these circumstances, it is clear that the Executive Board is the proper group to speak on behalf of the Section 9(a) representative with which the Employers must bargain, and that Romero's claims of representational authority are specious.

In any event, the Executive Board clearly had apparent authority as officers to take action on behalf of the Union, and Romero provided no clear, contrary evidence to the Employers. Therefore, they did not violate the Act by dealing with the Executive Board rather than with Romero.¹

In accordance with the above, the Region should dismiss the Section 8(a)(1) (and (5)) charges filed by Romero, absent withdrawal, and accept the withdrawal of the Section 8(a)(1) and (5) charge filed by the Executive Board.

B.J.K.

¹ See Howland Hook Marine Terminal Corp., 263 NLRB 453, 454 & n.5 (1982) (employer did not violate Section 8(a)(5) by recognizing one rival faction's choice of interim steward where two factions, who all were officers of the union and executive board members but supported two different candidates for steward, both acted with apparent authority, and both thus possessed a colorable claim, to speak on behalf of the union).